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Stenographic Transcript Of

HEARINGS

Before The

COMMITTEE ON GOVERNMENT AND FINANCE

UNITED STATES SENATE

YACOBSON
CHIEF OF STAFF

March 17, 1947

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MARK-UP

CLEAN AIR ACT AMENDMENTS

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FRIDAY, MARCH 25, 1977

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United States Senate,

Committee on Environment and
Public Works,

Washington, D. C.

The committee met at 9:20 a.m., pursuant to recess, in
room 4200, Dirksen Senate Office Building, Hon. Jennings
Randolph (chairman of the committee) presiding.

Present: Senators Randolph, Muskie, Bentsen, Burdick,
Hart, Anderson, Stafford, Domenici, Chafee and Wallop.

Senator Randolph. A pleasant morning to our guests.

We continue in the committee the markup on amendments
to the Clean Air Act.

Prior to moving into those matters, we have a nomination
of Robert Herbst to be Assistant Secretary of the Interior.

As you realize, I believe it can be borne out by the
documentation of the action in the Senate reorganizational
structure instead of this committee losing some of its
jurisdiction, we apparently have taken on some additional
problems.

Senator Muskie. Will the chairman yield?

Senator Randolph. Yes.

1 Senator Muskie. I suspect before long we will be fighting
2 other committees over that new jurisdiction.

3 Senator Randolph. That is true. Fish and wildlife are
4 with us now and some other areas of activity.

5 John, would you just mention the process to be followed
6 with the nominee?

7 Mr. Yago. Yes. The nomination of Mr. Herbst was referred
8 jointly to this committee and to the Energy and Natural
9 Resources Committee because he is the Assistant Secretary
10 for not only Fish and Wildlife but also for National Parks
11 and Recreation.

12 We have held their hearings. They have not voted unless
13 they are doing so today. Our hearing on Mr. Herbst was held
14 last Friday. He is the former Director of the Natural
15 Resources Department in the State of Minnesota.

16 Senator Randolph. Senator Anderson, would you wish to
17 make a comment about your colleague of that State?

18 Senator Anderson. He was my appointee, the Commissioner
19 of the National Park and Natural Resources. Normally, that
20 post is the most controversial post in State government. It
21 deals with parks and fishing and hunting rights. Everybody
22 in Minnesota is fishing and hunting.

23 He is the only Commissioner that I know of that actually
24 made a Governor look pretty good, which is difficult to do.
25 He has had the support of both political parties back home.

1 He was confirmed by my State Senate twice, without objection.
2 He is a former Executive Secretary of the Eisen Walton League.

3 He spent his entire life in the area of conservation,
4 forestry, fisheries and the rest of it. I can't think of
5 anybody better suited to serve in this capacity.

6 He appeared before this committee at some length. I
7 would be very happy to move to confirm his nomination.

8 Senator Randolph. Thank you, Senator.

9 Senator Anderson moves the committee report for the
10 nomination of Robert Herbst.

11 Senator Muskie. I second it.

12 Senator Randolph. The motion is seconded by Senator
13 Muskie. We will hold the actual vote until one additional
14 member of the committee comes into the room.

15 We have also the nomination of James Gustave Speth to be
16 a member to the Council on Environmental Quality.

17 Would you, John, and perhaps Senator Muskie, you might
18 wish to comment, I am not sure, on this nomination.

19 Senator Muskie. I think those who have been members of
20 this committee in the past know Gus Speth very well. He is
21 a man who has a definite and specific point of view on
22 environmental issues. He approaches them in a very thoughtful
23 fashion, not at all a knee-jerk approach.

24 As a lawyer, he has been involved in litigation in courts
25 for the Natural Resources Defense Fund, and I think has done

1 an outstanding job as a lawyer in presenting his views.

2 Those who are sensitive to people with strong environ-
3 mental views, they might be sensitive to him. But he is not.
4 I think he attempts to reach balanced judgments. I think very
5 highly of his ability and approach; although I don't
6 necessarily always agree with his views. But obviously,
7 the Council on Environmental Quality should have strong
8 representation from the environmental point of view.

9 I think that Gus Speth is an outstanding candidate
10 for that kind of representation. I am happy to move his
11 nomination.

12 Senator Randolph. Senator Muskie moves the nomination
13 of James Gustave Speth. Is there a second?

14 Senator Anderson. Second.

15 Senator Randolph. Senator Anderson seconds that motion.

16 As in the prior nomination, also in this nomination we
17 shall wait until the additional membership come before we may
18 begin the voting.

19 It is agreeable for us to discuss and move forward with
20 the further consideration of the amendments.

21 Ed, do you have any preference? Do we wish the staff to
22 go back and perhaps bring us up to date? Would that be
23 helpful? I will be subject to your wishes and the wishes of
24 the other members of the committee.

25 Senator Muskie. I think it would be helpful for the

1 staff to do so. But I might express a few initial observations.

2 I think it is terribly important to report a bill and to
3 do it as soon as possible. I sense that members of the
4 committee are restive that this consideration of the Clean
5 Air Act seems to be dragging on and on. We are spinning our
6 wheels. We don't seem to be coming to any resolution of the
7 issues in order to get a bill to the floor.

8 My own view, as you all know from the beginning, has been
9 that we ought to report to the floor something as close to
10 the bill that the Senate passed last year as possible, in
11 order to minimize the time necessary for its consideration,
12 here, in the Senate, and as for the Congress as a whole. It
13 is time we got a bill to the President's desk.

14 The best chance of doing so is to minimize the changes
15 in the bill. I am still strongly of that view.

16 That isn't to say that I would cut off any member of the
17 committee who wishes to offer anything or who wishes to discuss
18 it. I am simply hoping that other members of the committee
19 would accept that approach on my part and impose restraint
20 on themselves so that we can move rapidly.

21 The leadership of the Senate has scheduled this bill
22 for April 4 on the floor. This is, what? March 25 now. We
23 really ought to try to move this out in one or two sessions.

24 In that spirit, I would simply offer my own view of
25 what seem to be the remaining pending amendments. There are

1 eight of them that the staff has identified for our attention
2 on an agenda for today.

3 First, there is high altitude emissions. I think we
4 ought to vote on that issue. Senator Domenici told me
5 yesterday he thought he could be here between 9:30 and 9:45
6 so we can move to that.

7 Secondly, there is the non-attainment issue which I think
8 we need to come to grips with even though last year's bill
9 did not. I am all for trying to put together a formula for
10 dealing with the non-attainment issue.

11 With respect to the other six amendments, whether they
12 would have the effect of improving or weakening the bill, I
13 am going to be against them, because I think to try to deal
14 with each of them is simply going to prolong this markup, add
15 controversy to it.

16 The first two issues we did not deal with last time.
17 There developed some urgency so that we do deal with them.
18 But with respect to everything else on that agenda, I am
19 going to oppose any consideration of them. That is just a
20 personal view.

21 I repeat, I am not going to try to block anybody else
22 from bringing up any issues that they wish. That is my view
23 of it. The Chairman knows that.

24 Senator Randolph. Yes, I understand. It is your desire
25 to move forward even though there is difference within the

1 committee because in the Senate matters can be determined by
2 presentations and votes there.

3 I will have two amendments, possibly. Are there other
4 members who anticipate offering amendments?

5 Senator Wallop. Mr. Chairman, I am taking Senator
6 Muskie's advice as to not delay things. I have tried by
7 redrafting our MMT thing and going to members of the committee
8 and, if it is possible, I would like to ask unanimous consent
9 to bring up new language to try to smooth out the economic
10 bumps that we put in the other one.

11 Senator Muskie. I have before me a proposal -- I have
12 no objection to wrapping that one up -- in addition to the
13 two items that I talked about. That is from my point of view.

14 Senator Randolph. Lloyd, you will have --

15 Senator Bentsen. Yes, I will, Mr. Chairman. I am
16 concerned with the non-attainment problem. I certainly agree
17 that we ought to address that problem. I am not concerned
18 about the date before the deadline for scheduling on the
19 floor, although I certainly want to accommodate everyone to
20 the extent we can.

21 But I think this is an exceedingly complex, important
22 problem, and one that is going to take a great deal of thought
23 and work in this committee to try to resolve it.

24 When I look at a map of the United States and see the non-
25 attainment, I see various markings in red. All of this in

1 yellow we have no idea whether they attained it or not. We
2 think they haven't. But we don't have sufficient monitoring
3 to do it. This affects the entire country.

4 I will be looking forward to try to work out some kind
5 of reasonable compromise so we can feed to the fire and have
6 them continue to reduce the emissions level, not letting them
7 stall and drag their feet but having something that is
8 realistic and can be attained.

9 I know on the oxygen level, Houston, we are exceeding it
10 four to one. If we stopped all vehicular traffic in the City
11 of Houston, if we caught out all refinement, we still would
12 be exceeding it by two to one. That is the kind of problem
13 we have on the standards you are talking about.

14 Senator Randolph. I wonder if you would permit the
15 chair to call for the roll on both of the nominees because
16 of the members present.

17 These are the two nominations on which we need a
18 constituted quorum of eight members for the calling of the
19 roll.

20 Would you call first Mr. Herbst.

21 Mr. Yago. Senator Anderson.

22 Senator Anderson. Aye.

23 Mr. Yago. Senator Baker.

24 Senator Stafford. Aye by proxy.

25 Mr. Yago. Senator Bentsen.

1 Senator Bentsen. Aye.
2 Mr. Yago. Senator Burdick.
3 Senator Burdick. Aye.
4 Mr. Yago. Senator Chafee.
5 Senator Anderson. Aye by proxy.
6 Mr. Yago. Senator Culver.
7 Senator Randolph. Aye by proxy.
8 Mr. Yago. Senator Domenici.
9 Senator Stafford. Aye by proxy.
10 Mr. Yago. Senator Gravel.
11 Senator Anderson. Aye by proxy.
12 Mr. Yago. Senator Hart.
13 (No response.)
14 Mr. Yago. Senator McClure.
15 Senator Stafford. Aye by proxy.
16 Mr. Yago. Senator Moynihan.
17 (No response.)
18 Mr. Yago. Senator Muskie.
19 Senator Muskie. Aye.
20 Mr. Yago. Senator Stafford.
21 Senator Stafford. Aye.
22 Mr. Yago. Senator Wallop.
23 Senator Stafford. Aye by proxy.
24 Mr. Yago. Senator Randolph.
25 Senator Randolph. Aye.

1 Mr. Yago. Senator Hart.

2 Senator Hart. Aye.

3 Mr. Yago. The nomination is ordered reported by a vote
4 of 14 to nothing.

5 Senator Stafford. We give opportunity to Senator
6 Moynihan, who is not recorded by proxy or is not present, the
7 opportunity to complete the full membership on that vote.

8 Will you call the nomination of Gus Speth?

9 Mr. Yago. Senator Anderson.

10 Senator Anderson. Aye.

11 Mr. Yago. Senator Baker.

12 (No response.)

13 Mr. Yago. Senator Bentsen.

14 Senator Bentsen. Aye.

15 Mr. Yago. Senator Burdick.

16 Senator Burdick. Aye.

17 Mr. Yago. Senator Chafee.

18 (No response.)

19 Mr. Yago. Senator Culver.

20 Senator Randolph. Aye by proxy.

21 Mr. Yago. Senator Domenici.

22 (No response.)

23 Mr. Yago. Senator Gravel.

24 Senator Randolph. Aye by proxy.

25 Mr. Yago. Senator Hart.

1 Senator Hart. Aye.

2 Mr. Yago. Senator McClure.

3 (No response.)

4 Mr. Yago. Senator Moynihan.

5 (No response.)

6 Mr. Yago. Senator Muskie.

7 Senator Muskie. Aye.

8 Mr. Yago. Senator Stafford.

9 Senator Stafford. Aye.

10 Mr. Yago. Senator Wallop.

11 Senator Stafford. Aye by proxy.

12 Mr. Chairman, Senator McClure -- no by proxy.

13 Mr. Yago. Senator Randolph.

14 Senator Randolph. Aye.

15 Mr. Yago. Senator Domenici.

16 Senator Domenici. I pass.

17 Senator Stafford. Senator Chafee -- aye by proxy.

18 Mr. Yago. The vote on this motion is 11 to 1.

19 Senator Randolph. We give the opportunity to Senator
20 Moynihan, if he desires, and Senator Baker and Senator
21 Domenici, to vote later.

22 Thank you very much for interrupting.

23 Senator Burdick. We were talking about the pace for the
24 legislation. I am voting according to the speed in this
25 matter. One thing concerns me and I wonder if we have taken

1 it into consideration.

2 The President is announcing our energy policy in a few
3 weeks. The rumors are that there will be recommended a lot
4 of conversion from existing fuels to coal.

5 Senator Randolph. That rumor will become a reality.

6 Senator Burdick. My point is, have we anticipated some
7 of these things or maybe some flexibility will be required.
8 I am saying we will pass this bill and the President will
9 announce his policy and we may turn around and have to amend
10 it or something. I don't know how to get at it. I just know
11 it is coming. That is all.

12 Senator Randolph. I don't believe that this committee
13 should delay waiting for the message of the President, as
14 important as it will be. But I do not see how this date
15 carried on the calendar of April the 4th will be maintained
16 by the leadership.

17 I am sure in my own thinking that it is impossible for
18 us to move that bill to the floor at that time. I will be
19 glad to have discussion from other members.

20 Senator Burdick. I just raised the question, that is
21 all.

22 Senator Muskie. Mr. Chairman, I am as skeptical as you
23 are about the date. Nevertheless, it is a useful date before
24 us. It is brought to minimize the extent to which we open up
25 this bill. It is a kind of a subject which attracts new ideas

1 on a daily basis, as we know from the last two years. We
2 will never have it refined sufficiently to satisfy everybody
3 who is affected by one or another provision in the bill.

4 If we stay here until we have achieved the kind of
5 perfection that results in absolutely no disagreement on the
6 part of the committee as to any provision in the bill, we
7 are going to be here long after the energy crisis and the
8 environmental crisis have passed.

9 I think we have to individually make up our minds as
10 to whether or not the basic bill that the Senate passed last
11 year is still a reasonable resolution of most of the issues
12 so that we ought not to yield to the temptation of opening
13 all of them up to review, reexamination and redefinition. That
14 is a decision we have to make individually.

15 If the majority of the committee says that is reasonable,
16 then I think we ought to concentrate on the minimal number
17 of issues that are sufficiently urged for us to deal with it
18 at this time.

19 Others will disagree with my list. But my list, frankly --
20 and I thought I would start off the morning discussion by
21 sticking my neck out and it is not intended to inhibit any
22 other member from disagreeing with that list -- is to wrap up
23 the few questions that we have.

24 I think we are close enough to it. The non-attainment
25 issue that we are concerned about; we didn't deal with that

1 last year. It has emerged as a problem of the first rank,
2 the high altitude emissions question, but we seem to be in
3 close resolution on that. Beyond that, we should take the
4 rest of the bill as it is and report it. That is simply my
5 individual reaction.

6 There is ample opportunity on the floor available to
7 members of the committee to deal with other questions. It is
8 just a suggestion, not intended to inhibit anybody. I thought
9 it might be helpful to start out with, Mr. Chairman.

10 Senator Randolph. Gary?

11 Senator Hart. I agree completely with Senator Muskie.
12 There are three items on the staff eight-item agenda, one
13 of which will be raised by Senator Domenici; two of which I
14 will raise -- number 6 and number 7. I can make my arguments
15 on both of mine in 10 minutes.

16 I agree with Ed. I think with some self-restraint and
17 recognizing the rights of new members who may not be familiar
18 with this subject, I think we can dispose of what is remaining
19 fairly shortly.

20 Senator Randolph. We might do it today possibly.

21 I did not wish to be preemptive when Quentin mentioned
22 the conversion from oil to natural gas and coal. I only say
23 that I believe I have knowledge that in the recommendation of
24 the message on energy on April 20, there will be a substantial
25 thrust for the conversion which we have knowledge of over the

1 past. It will be contained in the recommendation of the
2 President. That is the only reason that I seemed to mention
3 it quickly, plus the interest of a State like West Virginia.

4 Is there any other comment?

5 Senator Domenici. Mr. Chairman, I don't know what the
6 list is. I commend Senator Muskie for bringing up one. I
7 mean, his notion of what we ought to consider.

8 But I do believe, Mr. Chairman, that we are on the right
9 track if we try to get this bill finished as soon as possible.
10 The attrition rate in terms of interest -- we have been at
11 it for so many months and years, most of us; I think we have,
12 as Gary indicated, given the new members adequate time to
13 consider these various issues.

14 For myself, unless we were to stop and say we will wait
15 until after April 20, I think it is a lost cause to continue
16 to try to meet, and meet with all the other things we have
17 got going.

18 I will handle my high altitude comments in five minutes.

19 Senator Randolph. Well, let's finish this morning, if
20 the members so agree, if there is adequate discussion and
21 opportunity.

22 Senator Muskie. In response to Quentin's question on the
23 coal, the last time we dealt with the coal conversion question
24 was in connection with the energy legislation. We didn't
25 deal with it in connection with the revision of the Clean Air

1 Act.

2 I suppose we have always got to be realistic and under-
3 stand that as legislation comes to us on related subjects
4 like energy or like economic development, so we may be
5 constantly confronted with the necessity to look at the impact
6 on the Clean Air Act and changes that have to be made. But
7 I don't think we can sit on the Clean Air Act itself simply
8 in anticipation of other legislative initiatives in these
9 other areas. We are going to have to deal with that as they
10 come.

11 Both in non-degradation and non-attainment, we, ourselves,
12 are passing judgment in one way or another on the problem
13 like coal conversion and forming judgments on them from the
14 clean air point of view. We may be forced to adjust those
15 conclusions as other legislation comes down the road. But
16 the fact is that the conclusions we are reaching here
17 represent our best judgment as to what the public health
18 requires. Then, as other priorities are brought to our
19 attention, we can deal with them. But I don't think we ought
20 to try to wait.

21 Senator Randolph. I hope we can move expeditiously,
22 of course.

23 Senator Burdick. I raised the question, that is all.
24 I didn't ask for any delay.

25 Senator Muskie. We may well be in conference when it

1 comes up, Quentin.

2 Senator Randolph. I hope the new members can agree with
3 us, even though they haven't been a part of the process on
4 the earlier work on the clean air subject that hopefully you
5 have gotten the grasp, and we can move forward and we have
6 the opportunity then in the Senate to offer amendments or to
7 vote as we would desire on any amendment that would be offered
8 or the subject in both.

9 Senator Chafee. Full speed ahead, Mr. Chairman.

10 Senator Randolph. Thank you, John.

11 Senator Wallop. Mr. Chairman, I am all for moving ahead,
12 too. I think I have done the background work on the MMT thing
13 with members and their staff and the committee staff.

14 I would like to ask unanimous consent from the committee
15 to bring the amendment up as a substitute to the language
16 adopted on MMT. I checked it with most member staffs.

17 I don't want to get into the issue because I agree with
18 Senator Muskie.

19 Senator Randolph. I think if we could act first on that
20 subject, since it was acted on, I don't say hurriedly but
21 with several members absent, was it not?

22 Senator Wallop. It was.

23 Senator Randolph. Would you address yourself?

24 Senator Muskie. I would like to vote up or down on this
25 amendment and not the entire subject.

1 Senator Wallop. I concur in that entirely.

2 Senator Randolph. If there is no objection, we will
3 proceed.

4 Senator Domenici. Could I ask from my time standpoint,
5 could we take the Domenici high altitude amendment immediately
6 after this?

7 Senator Randolph. Without objection, we shall do that,
8 sir.

9 Mr. Billings. I think every member has a copy of the
10 summary of the four modifications in the legislation and the
11 four provisions of the report. I think each member has a copy
12 of the cleaned up language which reflect those modifications.

13 Senator Wallop. In essence what we tried to do is simply
14 to qualify the language to achieve the same result, but not
15 get involved in the waste of fuel that might otherwise occur
16 if we adopted this the way the committee had it before. It
17 would mean that no company could introduce this into their
18 fuel after March 31, and instead of the 90-day provision it
19 would move it to the six-month in which we gave the
20 Administrator to approve or disapprove the additive.

21 It would provide a provision which would prohibit the
22 increased concentration of the use of any additive, specifi-
23 cally, MMT, which would otherwise be prohibited by the
24 legislation and would eliminate the language which requires
25 that fuel additives manufactured to demonstrate that there

would be no adverse effect on health and welfare because the basic thrust of the amendment was the amount of damage to the catalytic converter.

I suggested report language and worked that out with the staff. I think it achieves everything we tried to do except it moves out the economic level and changes the whole thing to 90 days.

Senator Muskie. I would like to make one suggestion with respect to the report. This is true this is attributable to the damage to the catalytic converter. In other words, it is conceivable that new fuel additives may have impact on health. It seems to me that the Administrator ought to be alert to that possibility and that manufacturers should be alert to the possibility that there will be concern and a similar reaction on the part of Congress if they are not sensitive to the health question.

I think it would be useful to have report language.

Senator Wallop. I concur in that. I have no further comments to make on it. I would be happy to answer any questions.

Senator Muskie. Mr. Chairman, in the spirit of compromise, I think this is a reasonable response to the immediate problem. I have already suggested the broader problem that the immediate problem red flags. I would hope manufacturing in the future will comply without being sensitive to a wide

1 range of concerns without new fuel additives, existing fuel
2 additives.

3 I think maybe it is realistic to respond to the immediate
4 problem. This seems a reasonable compromise of all of the
5 suggestions that have been advanced for dealing with it.

6 So, I am prepared to support the amendment.

7 Senator Wallop. I thank you, Senator.

8 Senator Muskie. Would the clerk call the roll?

9 Mr. Yago. Senator Anderson.

10 (No response.)

11 Mr. Yago. Senator Baker.

12 Senator Stafford. Aye by proxy.

13 Mr. Yago. Senator Bentsen.

14 Senator Bentsen. Aye.

15 Mr. Yago. Senator Burdick.

16 Senator Burdick. Aye.

17 Mr. Yago. Senator Chafee.

18 Senator Stafford. Aye by proxy.

19 Mr. Yago. Senator Culver.

20 Senator Hart. Aye by proxy.

21 Let me also add Senator Anderson's proxy -- aye.

22 Mr. Yago. Senator Domenici.

23 Senator Domenici. Aye.

24 Mr. Yago. Senator Gravel.

25 (No response.)

1 Mr. Yago. Senator Hart.

2 Senator Hart. Aye.

3 Mr. Yago. Senator McClure.

4 (No response.)

5 Mr. Yago. Senator Moynihan.

6 (No response.)

7 Mr. Yago. Senator Muskie.

8 Senator Muskie. Aye.

9 Mr. Yago. Senator Stafford.

10 Senator Stafford. Aye.

11 Mr. Yago. Senator Wallop.

12 Senator Wallop. Aye.

13 Mr. Yago. Senator Randolph.

14 Senator Randolph. Aye.

15 Mr. Yago. Senator Gravel, proxy to the Chairman?

16 Senator Randolph. Aye.

17 Mr. Yago. 13 to nothing in favor.

18 Senator Randolph. Those two members not present will
19 have the opportunity, as always, regardless of the number; it
20 would not change the results that would be recorded.

21 Senator Domenici. Mr. Chairman, my amendment was
22 discussed in detail last time. I moved its adoption. I would
23 just indicate that we have for some time in the United States
24 had a one-car strategy with the exception of California which,
25 in a sense, did not create a two-car strategy in terms of

standards.

As of last year when I stressed this point because it has only been in effect for one year, the Administrator has propounded regulations with reference to high altitude standards. They have been in effect for one year. In my opinion, they serve little purpose in terms of the overall clean-up of the air and on the economic end, for a very small portion of the population of this country, these two percent of the high altitude dealers in the United States that sell cars have been put in a posture of getting substantially less than the fleet to sell to their customers.

Whereas, dealers down the road a hundred miles or the sellers of fleets from another city close at hand -- that is, lower than 4,000 feet -- can sell these cars. The interstate cars can travel through these small communities and large ones in the high altitude areas. They are using the one national standard.

My amendment is a very simple and forthright one. It suspends the high altitude regulations until final compliance with our overall standards. The compliance will consist of all cars meeting the standards regardless of altitude. That means that we will have the high altitude impact when we get down to the final clean-up year, which is somewhere around '80 and '81.

In the interim, we ask for a study on the economic and

1 technological feasibility of this high altitude certification
2 that is going to be ultimately required of the whole fleet.
3 I think most of the Senators understand that about one-third
4 of our nation is over 4,000 feet. That is the cutoff point.
5 Only 2 percent of the cars are sold in these areas and the
6 manufacturers have responded to EPA's regulations by reducing
7 the model availability in these particular high altitude
8 cities, most of which are very small; although Denver and
9 Albuquerque are urban areas of significant size. They are
10 the two that are in it.

11 But the automobile manufacturers have responded by
12 just eliminating about 50 percent of the fleet from that area.
13 This is working an undue hardship for what we are getting out
14 of it. I would suspend them until the point in time until
15 we get on a final schedule at which time all cars would have
16 to be certified to meet high altitude standards.

17 With that, I move the adoption of my amendment, Mr.
18 Chairman.

19 Senator Muskie. Senator Hart?

20 Senator Hart. As with every point I have ever seen, it
21 has another side. Senator Domenici has well outlined the
22 economic problem caused by high altitude emissions. There is,
23 however, the other side of that coin which is the public
24 health problem. It is to say, noncompliance or mobile source
25 emissions in high altitude areas seem to be even more severe

1 than other parts of the country.

2 I particularly address myself to the Denver problem,
3 which is a substantial problem and which is auto-related.
4 There is a problem of marketing cars in the high altitude
5 areas. I think Senator Domenici has addressed himself well to
6 that, and I agree with what he said.

7 But there is also the other problem of pollution and
8 emissions and the impact that has on people's health. It is
9 substantial in the carbon monoxide areas.

10 Therefore, I would like to offer a clarifying or
11 specifying amendment to what Senator Domenici has suggested
12 by putting a date certain on his amendment. He has offered
13 the specific language, date of final compliance. His descrip-
14 tion of that, I think, was somewhere around '80 or '81.

15 What we don't know is what the House is going to do. What
16 we don't know is what a conference report is going to say. I
17 would like to offer a specifying amendment, an attainment date
18 certain of 1980. We can draw that January 1, 1980, or --

19 Senator Domenici. How about model year 1980?

20 Senator Hart. That would be earlier. That would be
21 fine with me.

22 Senator Domenici. Model year '81 would get you your
23 January --

24 Senator Hart. Model year '80.

25 Senator Domenici. That is six months earlier than what

1 we are contemplating.

2 Senator Hart. Model year '80 would be fine with me.

3 Senator Domenici. I think that is where the bill is going
4 to end up for attainment nationally. So I will accept that
5 clarifying amendment.

6 Senator Muskie. The amendment has been modified then.
7 Each place where it says, date of final compliance, that would
8 be filled in, model year 1980.

9 Any other discussion?

10 Senator Wallop. Mr. Chairman, in the handout sheet in
11 No. 2, the language, paragraph F-1, I wonder if we aren't put-
12 ting an almost certain impossibility in that language when it
13 says, regardless of the altitude at which they are sold or
14 driven.

15 Senator Hart's State has a road that goes up to the top of
16 Pike's Peak. It might not be possible to make such a technical
17 achievement. Certain overpasses within your State and mine, I
18 wonder if we aren't talking about the highest populated city.

19 Senator Hart. I think the staff can come up with the
20 appropriate report language that will take care of the problem
21 that you address. I think we are really talking about the high
22 altitude marketplace is what we are talking about.

23 Mr. Braithwaite. The present regulation applies 4,000 feet
24 I think it would be intended that that would be the test.

25 Senator Domenici. The certification, as I intended it, and

vf 2 1 I agree that adds some confusion, I am talking about ultimate
2 compliance by certifying at 4,000 feet, which has been the issue
3 at this point.

4 We aren't going to have a certification at seven because
5 we got one-half of one percent of the people living at seven.
6 I think it is the certification altitude of four we are talking
7 about.

8 Senator Wallop. Thank you.

9 Senator Muskie. Does it make sense to refer to the certi-
10 fication of the altitude instead of the altitude at which they
11 are driven?

12 Senator Hart. Is there any way we can word the language so
13 that cars certified at the lower end of the range, the 4,000
14 foot, zero to four, can achieve the 4,000 certification? It does
15 not operate very well when it goes over mountain passes. It is
16 the same kind of carburetor performance.

17 Senator Muskie. Why don't you just walk up Pike's Peak?

18 (Laughter.)

19 Senator Wallop. I have. I will ride in Senator Hart's
20 car.

21 Mr. Braithwaite. So it is capable of achieving the
22 standards above 4,000.

23 Senator Hart. I don't know what the term of art would be,
24 operating well, operating within reasonable performance stan-
25 dards at higher altitudes.

Mr. Braithwaite. That would introduce the concept of certifying drivability as well.

Senator Muskie. I think you can rely on the marketplace to push for drivability. The consumer is going to fight for drivability. It won't fight for clean air.

Senator Domenici. That is right.

Senator Muskie. I think if you had the clean air part, you are doing well enough; but couldn't you have certification altitude?

Mr. Braithwaite. That wouldn't be any problem.

Senator Muskie. Do you have any objection to that?

Senator Domenici. No, I don't. If they can word that that 4,000 is what we are talking about, if you can get rid of the word "driven," it is fine with me.

Senator Muskie. If you put certification altitude, wouldn't those be words of art that would be sufficient?

Senator Domenici. I would accept that. If that requires amendment to the statutory language, I accept that. If it can be done by report language, it is fine with me.

Senator Muskie. Any other discussion?

Senator Hart. Yes. I would like to offer another specifying amendment to Senator Domenici's amendment on an issue we discussed earlier. That is what about the half model line cars that are already in compliance?

The effect of the Domenici amendment as written is to say

vi 4 1 to the auto industry that the achievements you have made so far
2 can be scrubbed, can be abandoned, half of the model line, all
3 the model lines that are achieving altitude performance can be
4 dismissed, abandoned.

5 I think we ought to have some language in here in the
6 amendment possible to report at least just what we intend to
7 maintain as the performance levels we already have achieved.
8 Otherwise, we can see the X model years back to zero. There is
9 nothing in this amendment to prevent that from happening.

10 I would like to keep the industry at the level it has
11 already achieved. I think it would be very beneficial. I see
12 no real argument to permit the industry backslide for two years
13 or whatever.

14 Senator Muskie. You are saying we ought to continue to
15 manufacture cars at the minimal achievements they already have?

16 Senator Hart. At least the model line. About half of the
17 model lines are in compliance.

18 Senator Domenici. Mr. Chairman, I must oppose; not because
19 I wouldn't like to see it happen, but I think the whole purpose
20 of my amendment was to clear up what I think is a very muddled
21 situation that is not doing a great deal of good.

22 I am informed on both sides of this issue and I have con-
23 cluded that for the short period of time to model year 1980,
24 that there is a chance we will still get those kind of cars in
25 the area and the contrary is a marketplace confusion that we

vi 3 1 don't understand. We don't know what it is going to do for the
2 next two years to have that kind of imposition on models con-
3 tinuing under one certification and others being exempt in terms
4 of the marketplace in those areas.

5 Are we going to get two cars in the showroom and one is
6 \$22 cheaper and doesn't perform as well and the like? I just
7 don't think that is consistent with the spirit of what I was
8 trying to do.

9 If I thought my amendment was going to have a serious
10 ambient air problem, I wouldn't have offered it. I know mobile
11 source cleanup is a serious problem, but when you put in the
12 equation of how slowly we are going on stationary sources, the
13 degree of cleanup that is occurring in the marketplace under
14 normal standards, I just can't accept it because I don't know
15 what its effect is going to be.

16 I rather propose it and we vote on it as an amendment. I
17 can't support it because I just don't know what its total effect
18 on what I am trying to do will be. If I thought the effect of
19 mine was going to substantially harm the ambient air situation,
20 I wouldn't have offered it; but when you add everything together,
21 I don't think it will, for two years, and the benefits are
22 immeasurable in the marketplace in the small town.

23 We know Denver and Albuquerque has a problem, but the real
24 economic situation is on the 2,000 communities that are 4,000
25 feet high. Those dealers and citizens are put in an awful bind

vf 6 1 by having this limited availability and having to drive 100
2 miles to somebody they are not used to and bringing it in. I
3 don't know what the mix will do to the marketplace.

4 I appreciate his concern, but I can't accept it. If you
5 want to move on it, we can vote on it.

6 Senator Hart. It would be in a nature of an amendment to
7 yours. All I can say is Senator Domenici admits the problem in
8 Albuquerque. I am willing to admit a serious problem in Denver,
9 which the auto dealers themselves admit. Automobile dealers
10 understand that they are not equipped to handle it. It has to
11 be the manufacturers in Detroit.

12 The industry has made substantial investment, I don't know
13 how much, in getting half their model lines in compliance.
14 Essentially, what the amendment as written would do -- I don't
15 know what it would do. It would just tell them that that
16 investment is a waste. It is down the pipes for the next couple
17 of years, it puts half of those cars in limbo.

18 I don't think you have a situation if they can produce a
19 car that is in compliance that they would produce the same model
20 in compliance and out of compliance, if they can do it now they
21 will continue to do it now. All Senator Domenici's amendment
22 will do is tell them they don't have to get the other half of
23 their cars in compliance until model year 1980.

24 Otherwise, I think we cause a great confusion in the
25 industry by telling them what they have already done they don't

vf 7 1 need to do for a couple of years. I don't see it as a substan-
2 tial detriment to the auto industry or to the small town dealers
3 which Senator Domenici and I are both concerned about. The same
4 situation will prevail for the next two or three years.

5 Senator Randolph. Senator Hart, as I understand, a sug-
6 gested amendment of modification has been agreed to without
7 voting on an amendment to the amendment. Is that correct?

8 Senator Domenici. But he has another one now.

9 Senator Randolph. I understand. I am saying that was
10 agreed to?

11 Senator Hart. That is correct.

12 Senator Randolph. If Senator Domenici is not agreeable to
13 your second modification, you propose to offer that as an amend-
14 ment to his amendment?

15 Senator Hart. That is correct. I am prepared to vote on
16 it unless there is a question?

17 Senator Muskie. What is the language?

18 Senator Hart. I am relying on the wisdom of the staff.
19 Essentially, we could put language in very simply to say that
20 nothing contained in this amendment shall effect standards of
21 performance in high altitude areas presently achieved by the
22 industry, or something to that effect. That is the thrust of
23 it.

24 I am sorry, I don't have specific language involved, but
25 that is my intent here. I think it could be done in a sentence.

vf 8 1 Senator Stafford. I was going to ask, Senator, I have been
2 getting a little confused in this debate. As I understand what
3 you are saying, half of the products of the industry currently
4 meets high altitude standards. As you see it, Senator
5 Domenici's amendment might eliminate the meeting of those
6 standards by the half it now does, but exclude only about two
7 percent of production over the next couple of model years, or
8 would it be the opposite?

9 Senator Hart. I don't know what you mean by exclude. We
10 are really talking about two percent of all cars.

11 Senator Stafford. Two percent of America is involved in
12 Senator Domenici's amendment, but your fear is that his amend-
13 ment would permit half of the production which now meets high
14 altitude standards to escape that, a couple of years?

15 Senator Hart. Precisely.

16 Senator Bentsen. Would you state your opposition, again?

17 Senator Domenici. I have talked to the auto dealers in
18 the small communities and they don't know what this is going to
19 do to the marketplace. What Senator Hart is saying is, during
20 the next three years, try to maintain this same ratio of alti-
21 tude certified to the overall availability.

22 Models change, new cars come out. We don't know what it
23 is going to do to the marketplace mix if on the one hand, we
24 are trying to say make all the automobiles available at high
25 altitude, which was our goal, and then at the same time say, but

vf 9 1 maintain the same level of high altitude certified cars.

2 We don't know whether that means a higher price for the
3 high altitude car in the window, better performance of one
4 versus the other at high altitude. The marketplace confusion
5 would tend to water down substantially, the intent could water
6 down the marketplace impact.

7 That is all I really intended by my amendment, was to give
8 the fleet that was available elsewhere, make that available in
9 these few years while we move toward certification on high alti-
10 tude on all of them. I would hope they would continue to send
11 into that market high altitude certified cars.

12 I would hope people would buy them, but I don't know the
13 effect of that kind of a quota on them because the marketplace
14 and the production is very complicated. I don't understand it.
15 So I don't know what will happen, whether we will end up having
16 given them very little. I think I had general concurrence that
17 we want to help solve this model distribution and economic
18 problem.

19 Mr. Brayman. Mr. Chairman, I think the example of Chrysler
20 Corporation might be a very good one in this instance. Chrysler
21 Corporation is meeting the high altitude regulations by selling
22 its California certified cars in Denver, Albuquerque, and Salt
23 Lake City.

24 In effect, I think Senator Domenici's concern is that under
25 the Hart amendment, you would have Chrysler still selling some

vf 10 1 California cars in Denver and in the same showroom having 49
2 State cars so that you would have two types of entirely differ-
3 ent cars, in effect, in the same showroom. It would upset the
4 balance and the sales patterns considerably.

5 Senator Domenici. I do understand that Senator Anderson
6 intends to offer an amendment which would permit States to
7 select the California models for delivery to their States. That
8 would give those who favor the Hart approach an opportunity to
9 vote on that issue.

10 I don't know whether we would accept that amendment, but
11 that would make another standard in the whole State if you were
12 to accept the other proposll and it would be moving in the
13 direction and we would have a chance to vote on that issue.

14 Senator Hart. I am prepared to vote, but two peccent of
15 gross sales doesn't mean anything to anybody except the people
16 who live in Denver and Albuquerque. Half of that two percent
17 presently meets high altitude standards. I don't think for the
18 next couple of model years we ought to let that situation get
19 out of hand.

20 The investment has been made, the tooling has been done.
21 They can comply. They are complying with half of their model
22 lines. All I am saying is we are going to give them a break on
23 the rest of their model lines, but let's don't backslide from
24 what we already achieved.

25 Senator Randolph. Senator Domenici, if the amendment that

vf 11

1 Senator Hart is offered, do you feel that the substance of your
2 amendment has been crippled?

3 Senator Domenici. The problem I have is that I don't know
4 whether it will or won't because of that confusion. Because of
5 that confusion, I think I would have to answer your question in
6 the affirmative, that I believe it would. If I could clearly
7 understand how that is going to work in the marketplace for the
8 next three years or 2-1/2, two models or three models, I would
9 accept it.

10 But I think what is going to end up, there is going to be
11 such confusion and exchange of the model lines and different
12 advertising of the model lines that it probably will make my
13 amendment rather ineffective. I don't know that and I don't
14 think Senator Hart offers that in that spirit because these
15 small towns have the same problem that we have, but the end
16 problem could very well be that we have not helped very much.

17 Senator Randolph. Is it agreeable with you, Senator
18 Domenici and Senator Hart, to have your amendments offered had
19 have the vote on it?

20 Senator Domenici. Yes.

21 Senator Hart. Yes.

22 Senator Randolph. The language, did you have an agreement,
23 Gary, on the language or the approximation of it?

24 Senator Hart. The approximation would be either something
25 like manufacturers must continue to offer for sale at high

vf 12

1 altitude the same percentage that the models were offered at
2 during model years 1977, 1978 and 1979; or in the alternative,
3 nothing contained in this amendment would be construed in any
4 way to affect manufacturers' compliance with high altitude
5 standards, they agreed they have achieved that; something in
6 that nature.

7 Senator Randolph. Do we understand the thrust of the
8 amendment with the language?

9 Senator Domenici. I understand it. If it passes, we will
10 work together on it. If it doesn't pass, obviously the record
11 will speak for itself.

12 Senator Randolph. I do appreciate the partnership of the
13 problem which you have both shared here.

14 Senator Burdick. I would like some clarity. Does this
15 mean in the showrooms in Albuquerque, you will have two model
16 lines, one qualifies and one not qualifying?

17 Senator Domenici. Yes, one qualifying with national
18 standards and one high altitude.

19 Senator Chafee. Under the Hart amendment.

20 Senator Hart. But they will be different cars.

21 Senator Muskie. The same model will not have two versions.

22 Senator Domenici. It could.

23 Senator Muskie. At the present time for some models, they
24 will have to meet this requirement and some are not required,
25 that would continue.

VF 13 1 Senator Burdick. Do they change the model every year?

2 Senator Muskie. Yes.

3 Senator Burdick. This only applies to half the cars for
4 one year?

5 Senator Muskie. No, each year.

6 Senator Domenici. His intention would be to try to follow
7 it into the next model by some percentage.

8 Senator Hart. Let's say a Ford Capri presently meets high
9 altitude standards in 1977, model year 1978 and 1979 would still
10 meet high altitude standards; but a Ford something else might
11 not, which is the situation we presently have.

12 What we are saying is the model lines that don't have high
13 altitude performance, they don't need to have it until model
14 year 1980. That is the modified Domenici amendment.

15 Senator Randolph. Gary, you said you don't understand the
16 models. I would only add that the television advertisements, I
17 am not certain whether they are advertising the young woman or
18 the car, the cougar, the car or what not.

19 Senator Hart. There is very little this committee can do
20 about that.

21 Senator Randolph. No amendment will be offered.

22 (Laughter.)

23 Senator Hart. I wouldn't even want to get into high alti-
24 tude performance.

25 Senator Randolph. We can agree that some types of models

vf 14 1 will be everywhere. On that high note, we will vote.

2 Senator Domenici. Again, if it was as simple as described,
3 I would be for it; but let me tell you about one model, about
4 the Capri, for instance.

5 As an automobile, the Capri automatic six is not certified
6 for high altitude, but the Capri automatic eight is. I submit
7 that we are going to have the six and the eight in the same
8 showroom, inventories of both, one trying to comply with the
9 spirit of the Hart amendment, keep it in the showroom and we are
10 going to have a Capri eight available under the amendment.

11 So it isn't as clear-cut as keeping the high altitude on
12 one model line and thus having no confusion. There will be a
13 great deal. I don't think the effect and impact is all that
14 great. I am prepared to vote, Mr. Chairman.

15 Senator Randolph. Perhaps it is best, if agreeable to both
16 Senator Domenici and Senator Hart, that we vote.

17 Call the roll, please.

18 Mr. Yago. Senator Anderson?

19 Senator Hart. Aye, by proxy.

20 Mr. Yago. Senator Baker?

21 Senator Stafford. No, by proxy.

22 Mr. Yago. Senator Bentsen?

23 Senator Bentsen. No.

24 Mr. Yago. Senator Suzuki?

25 Senator Rydick. No.

vf 15

1 Mr. Yago. Senator Chafee?
2 Senator Chafee. No.
3 Mr. Yago. Senator Culver?
4 Senator Hart. Aye, by proxy.
5 Mr. Yago. Senator Domenici?
6 Senator Domenici. No.
7 Mr. Yago. Senator Gravel?
8 Senator Randolph. Aye, by proxy.
9 Mr. Yago. Senator Hart?
10 Senator Hart. Aye.
11 Mr. Yago. Senator McClure?
12 Senator Domenici. No, by proxy.
13 Mr. Yago. Senator Moynihan?
14 Senator Muskie?
15 Senator Muskie. Aye.
16 Mr. Yago. Senator Stafford?
17 Senator Stafford. No.
18 Mr. Yago. Senator Wallop?
19 Senator Domenici. No, by proxy.
20 Mr. Yago. Senator Randolph?
21 Senator Randolph. No.
22 Mr. Yago. The motion fails by a vote of five to nine.
23 Senator Randolph. We will give opportunity for those
24 members not present to vote.
25 Are you ready to move your amendment or does Senator

1 Anderson have a modifying amendment?

vi 16 2 Senator Domenici. No, I move my amendment.

3 Senator Randolph. Call the roll, please.

4 Mr. Yago. Senator Anderson?

5 Senator Hart. Aye, by proxy.

6 Mr. Yago. Senator Baker?

7 Senator Bentsen?

8 Senator Bentsen. Aye.

9 Mr. Yago. Senator Burdick?

10 Senator Burdick. Aye.

11 Mr. Yago. Senator Chafee?

12 Senator Chafee. Aye.

13 Mr. Yago. Senator Culver?

14 Senator Hart. Aye, by proxy.

15 Mr. Yago. Senator Domenici?

16 Senator Domenici. Aye.

17 Mr. Yago. Senator Gravel?

18 Senator Randolph. Aye, by proxy.

19 Mr. Yago. Senator Hart?

20 Senator Hart. Aye.

21 Mr. Yago. Senator McClure?

22 Senator Domenici. Aye, by proxy.

23 Mr. Yago. Senator Moynihan?

24 Senator Muskie?

25 Senator Muskie. Aye.

1 Mr. Yago. Senator Stafford?

2 Senator Stafford. Aye.

3 Mr. Yago. Senator Wallop?

4 Senator Domenici. Aye, by proxy.

5 Mr. Yago. Senator Randolph?

6 Senator Randolph. Aye.

7 Senator Stafford. Senator Baker, aye, by proxy.

8 Mr. Yago. The vote is 14 to nothing. The motion is
9 adopted.

10 Senator Randolph. I do want to add after the vote and the
11 discussion, that there are times when an amendment or an amend-
12 ment to an amendment certainly are circumscribed to a degree by
13 the condition of one or two localities. It is very difficult
14 for me to vote upon it, but we have to come to that point. It
15 is a matter of decision, but I trust that it can be worked out
16 successfully. Perhaps some give and take a little later might
17 be helpful in reference to the Senate debate.

18 Senator Muskie. I did not enter into that, but I want to
19 say I am concerned. The constant problem is to find ways to
20 force technological development. I am concerned about the point
21 that Senator Hart made. Here we backed off on a situation in
22 which we had succeeded in authorizing action in the direction of
23 the service of the public interest.

24 I am not trying to revive the debate. The vote has been
25 taken and settled; but I hope we have in mind as we consider

vf 18 1 other features of the bill, I think we ought not to back off
2 with the successes we have had.

3 Senator Randolph. Senator Bentsen, I believe that you have
4 an amendment?

5 Senator Bentsen. Rather than say I have an amendment to
6 offer, we have been working with the staff and the staff has
7 made considerable progress on an exceedingly difficult problem
8 for virtually every member of this committee. That is the ques-
9 tion of nonattainment on oxygen standards.

10 You have got 88 percent of the areas reporting in the
11 United States who do not attain these standards and you have
12 most of the rest of the United States not monitoring at all.
13 The staff has come up with some language which makes some sub-
14 stantial headway on it. Let me give you some examples.

15 You get into the northeast, they don't reach the attainment
16 standards. The same thing is true of much of California. It is
17 true of almost all the Gulf Coast, Florida to Texas. We don't
18 fully understand the correlation, for example, between hydro-
19 carbons and oxygens.

20 We have a study that I helped support by the Air Commission
21 that is supposed to be out in a couple of years to give us a
22 better understanding of the correlation of hydrocarbons and
23 oxygens and whether this particular standard of .8 million is a
24 reasonable standard. We have reports made out in the middle of
25 the Gulf of Mexico where they have not attained the oxygen

1 standard that we are talking about here.

2 In Houston, Texas, where they have cut down the emission
3 of hydrocarbons from stationary sources by 85 percent, the
4 oxygen standard has gone up. You have certain conditions along
5 that Gulf Coast that apparently make the problem exceedingly
6 difficult and I think make it a fictitious standard that cannot
7 be attained by anything we foresee today. So we are maintaining
8 a fiction, a standard that is not realistic.

9 If we cut out all the vehicular traffic in Houston, we
10 would still be twice the standard. If we cut down all
11 industrial output, we would still exceed the oxygen standard.
12 Obviously, some changes have to be made in this thing.

13 The language of the staff meets a good part of the problem,
14 but one of the problems you run into when you get into the
15 trade-off standard, you put a premium on a polluter. You have
16 yourself an old plant and you have not complied and the emis-
17 sion of the pollutants is high. You have yourself a very valu-
18 able piece of property because somebody is going to come in and
19 buy you out and close you down.

20 You have got a situation on sea dock which is an example
21 of what is happening today, where they made a proposal on trying
22 to get it approved from an environmental standpoint. They made
23 a proposal that the ships will not come into the coast and that
24 would result in a substantial reduction of emissions of pollu-
25 tants.

1 The EPA said that would not comply, even though there was
2 a reduction. First they said it was all right, and then they
3 changed their mind on it. Then the next thing they said, and
4 this is a facility that as those facilities go, emits a rela-
5 tively small amount of pollutants. All of sea dock is just
6 something a little over 100 tons emission. They finally recom-
7 mended to them to go buy a cleaning plant in a little town and
8 close it down.

9 When you get into the trade-off and in the language of the
10 staf, as I understand it, they say they have to show this net
11 reduction before a new plant could be built, one of our problems
12 in doing this is you get a ratchetting effect. As a plant is
13 built, you may get a bump on that curve as they bring about
14 the chnges that have to be made in cutting down on the emission
15 of the pollutants

16 I would like to see it, rather, that we have some kind of
17 a period of attainment where it is periodically reviewed, maybe
18 six months, maybe a year, but show that they have continued to
19 cut down the amount of emission of pollutants.

20 The other thing I would like to see in this is that they
21 require all of these areas to monitor. I don't know how you
22 know if you are making headway or not unless you require moni-
23 toring of the areas. I look at this map and see who has
24 attained and who has not attained. The red is made up of areas
25 of those who have not attained and are being monitored. The

vi 21 1 yellow is made up of the areas with no monitors and the status
2 is unknown.

3 If we are going to try to cut down the emission of pollu-
4 tants in this country, we are going to have to have something
5 we can measure it by. I think that ought to be put in this
6 piece of legislation. I didn't see it in there.

7 Again, in this question of trade-offs, that you be given
8 a period of time to measure, be it six months or a year, to show
9 that you are really holding their feet to the fire, that you are
10 making them cut down on the emission of pollutants; but that you
11 move one plant in and close another, that you don't measure it
12 on that specific day, but give them a period of time to make the
13 adjustment. I think that makes it a more practical and realis-
14 tic one.

15 Then when it comes to the plans for control of transporta-
16 tion, I think we ought to get in some language there where we
17 get some assistance out of EPA and if not from EPA, from the
18 Department of Transportation Planning. Some of these States
19 will have a tough time coming up with appropriate plans. I
20 would like to see some additional help made on that.

21 Then, I don't think that the limitation should just be on
22 those plants which emit in excess of 100 tons of hydrocarbons
23 annually. I think that when we call for certain standards of
24 technology, that we ought to have it on all the sources exist-
25 ing, otherwise you get yourselves a big company that will

vf 22

1 divide it up into several different sources, small plants, and
2 collectively violating but individually not violating, coming
3 over the 100-ton emission. I would like to see that technology
4 required of all of these stationary sources.

5 Mr. Chairman, I am not here to offer the Bentsen amendment
6 because I think the staff has made some good headway; but I
7 still would like to look at what they propose and see if we can
8 further improve it where we continue to hold their feet to the
9 fire to show they are cutting down on the emission of pollutants
10 and that they are consistent in cutting it down.

11 However, in turn, I want to see some areas of the United
12 States that the Administrator, if he sees that they have cer-
13 tain topography for one reason or another, makes it absolutely
14 impossible for them to attain .08, that they be given some
15 consideration

16 I leave that up to the Administrator, but I think you are
17 going to find conditions, just like I am sure I was fully
18 informed on all of the problems of Colorado and New Mexico on
19 that last vote; but it is pretty hard to decide just listening
20 here in the few minutes that you do. I would like to have an
21 administrator have the authority to look at those considerations

22 Senator Randolph. Lloyd, we know that you have been work-
23 ing with staff, as you have indicated. I am sure that Senator
24 Muskie has given attention to this matter. I have given atten-
25 tion to it also, and could possibly offer an amendment which

might go through the subject generally of nonattainment; but if it is agreeable and I will ask Senator Muskie, it might be the time for the staff to discuss it, or, Senator Muskie, you to.

Senator Muskie. I would like to make a few observations, simply to give additional insight, maybe action to this problem. Again, I don't have any proposal. I am not yet ready to endorse the suggestions staff has developed. As a matter of fact, I am not sure that the staff at this point is entirely satisfied with what it has produced, but we have to begin somewhere.

First, the social problem, the economic problem that faces us is the fact that in the so-called dirty areas of this country, there is a continuing thrust for growth. Populations are growing. There are disadvantaged elements of the population who need the benefits of growth in terms of jobs, opportunities.

The question is shall we use the attainment of clean air standards as the threshold which must be crossed before new growth is permitted? In other words, shall we impose upon those areas, the discipline of no growth and all the social consequences that will flow because they have not attained clean air objectives?

That is the problem. It is a real problem and it is a problem that we ought to try to address in this Act. It has emerged as a clear problem because, I suppose in part because of the recession, because we are approaching the deadlines and the consequences of insisting upon the standards by deadline

vf 24 1 time and begun to drive home the point that what we are talking
2 about is not just a clean air policy, but a social policy which
3 imposes the costs and the disciplines, the consequences of no
4 growth on areas of this country where growth is still an essen-
5 tial in terms of human needs.

6 Maybe those who disagree with that conclusion -- I am not
7 among them -- still see great unemployment problems, great youth
8 deprivation problems in those areas that we need to address, we
9 need to consider in the Budget Committee and in these other
10 Senate committees.

11 The question is how do we in a compatible fashion give our-
12 selves the flexibility to deal with those problems while still
13 moving toward clean air?

14 Senator Bentsen. I think the Senator from Maine has stated
15 it very well. I am in concurrence. I might further add on this
16 map that we are talking about, New York and Pennsylvania are
17 States that have not attained these standards and will have an
18 exceedingly difficult time in attaining these standards.

19 It is a problem not unique to just California or Texas or
20 Mississippi, but substantial parts of the northeast share the
21 same problem. Those parts that are not in red in the northeast
22 are parts that have not been appropriately monitored at this
23 point. So we don't know what their situation is.

24 Senator Muskie. What is the problem? The problem is the
25 oxygen. There is a failure to be able to achieve an oxygen

vf 25

1 standard which is the heart of the problem. Last year's bill,
2 the one before us dealt with nonattainment in a very limited
3 fashion, with respect to the expansion of major industries that
4 would find it difficult to expand outside other low indications.

5 What we are talking about now is a broader problem, not
6 just that one; but whether or not we should enable new indus-
7 tries to cover areas that haven't achieved the standard. The
8 problem of achieving the oxygen standard is a function of three
9 factors.

10 The first is the tremendous dependence of this society on
11 hydrocarbons; and on hydrocarbon emitting activities from auto-
12 mobiles and from other moving and stationary sources, there is
13 dependence on hydrocarbons.

14 Secondly, the lack of adequate control of automobiles and
15 major stationary sources and then, as Senator Bentsen has
16 pointed out, the virtual noncontrol of small sources of hydro-
17 carbons. That has an accumulated effect, which added to the
18 two others contributes to this problem.

19 Finally, there is the atmospheric chemistry of hydrocar-
20 bons. There is evidence that suggests that even insignificant
21 contributions of hydrocarbons in rural areas mixes with other
22 pollutants in the atmosphere and photochemically reacts as those
23 pollutants are transported across the country. So it is a
24 complicated scientific problem as well.

25 The staff has suggested that the problem as thus defined

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1 suggests a statutory strategy which is based on five elements.
2 The first, maximum control of automobile hydrocarbons at the
3 earliest possible date; secondly, a major national effort to con-
4 trol automotive and stationary source oxides of nitrogen because
5 they are an element in the formation of oxygen, especially over
6 long distances.

7 Third, a major effort to require the control of existing
8 stationary sources, large and small, of hydrocarbon emissions
9 and; fourth, an effort to get States to adopt emission inspec-
10 tion and maintenance programs to assure that cars on the road
11 are functioning with the lowest possible emissions and; finally,
12 an incentive for communities to adopt other measures such as
13 transportation controls in order to gain the reduction needed to
14 omit new air polluting activities.

15 The thrust of what I am saying is, I hope this is a point
16 that is driven home, that achieving clean air is essential to
17 new growth. To the extent that we fail to achieve clean air, we
18 create these obstacles to new growth. So when we hear arguments
19 from the polluters that they need relaxation with discipline
20 upon themselves for economic reasons, the other side of the coin
21 is that to the extent that you relax the pressure on polluters,
22 to what extent do you inhibit new growth?

23 That problem is almost always overlooked in the advertising
24 and propaganda by major polluters when they ask for relief.
25 They ask for relief on economic grounds. They don't tell the

vi 27 1 American people that if they get the relief, that they will
2 impose an economic cost represented by a limitation on new
3 economic activities, on new enterprises, on new economic growth.
4 So that it is a complicated matter.

5 What the staff is about to present to us in summary will
6 consist of the following: It will require the revision of
7 implementation plans by the States. It establishes as a trade-
8 off for unhealthy air vigorous control requirements on the con-
9 trols of existing and new sources. It authorizes local deci-
10 sions on growth, the effect of which must be to assure that not
11 only do total emissions not increase, but that reasonable
12 further progress on an incremental basis be assured.

13 That is the philosophy of what the staff is about to pre-
14 sent. One ought to focus on that basic philosophy as one tries
15 to evaluate the means for implementing it; but what it does mean
16 is a delay, it seems, an unavoidable delay with respect to
17 present deadlines in the achievement of air quality standards.

18 On the other hand, it promises, hopefully, effectively
19 promises that there will be no increase in total emissions and
20 that there will be an incremental and assured reduction of
21 emissions toward the goal of air quality standards.

22 I hope that I succeeded in clarifying at least what it is
23 that we are trying to do here. I am all for trying to deal with
24 this and I am openminded on the methods. I think it is serious
25 and I think if we don't deal with it effectively, that not only

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1 can we muddy the prospects for economic growth that the country
2 needs in areas where there are real social problems, but we
3 could really create a backlash to the clean air goals, if we
4 are unrealistic and push a confrontation oriented solution to
5 the clean air problems.

6 I hope I have made myself clear. This may be the time now
7 for the staff to --

8 Senator Bentsen. If I may just take about a minute here,
9 I agree with all of what you have said, Senator Muskie. I want
10 to reiterate again that I don't want to relax the measure. I
11 want to see an incremental reduction of the emission of pollu-
12 tants and I want to see a plan for it. I want to see the full
13 monitoring so that we can catch cheaters and we can force them
14 all to do it.

15 I believe we can have growth and have it that way. I don't
16 think we can have growth inless we have cleaner air than what
17 we have today. I want to see technology requirements placed on
18 all emissions, certainly not stop at the 100 tons, above and
19 below that type of situation. So I am in accord with that.

20 The only variation is I said was how I thought we could
21 accomplish it in a realistic way. I think that is what we also
22 ought to address ourselves to as we go along.

23 Senator Muskie. I am under the impression that what I said
24 was consistent.

25 Senator Bentsen. Yes.

vf 28 1 Senator Domenici. Mr. Chairman, I commend you and Senator
2 Bentsen for addressing this issue. It is one we haven't
3 addressed. I think we are all finding that the problem is
4 exactly as you have described it. It has been kind of sitting
5 there ominously. With the economy being where it is and every-
6 one talking about it growing in order to solve many of our
7 problems, I think it has to be addressed.

8 I would particularly be interested as the staff discusses
9 it, Mr. Chaimran, in their assessment of how much benefit do we
10 expect from the floor when we look at the SIP's. As I under-
11 stand it, many of them were put on a long time ago under the
12 first thrust of the law, and that there is some hope for relief
13 when they reevaluate the mandated ratchetting, cleaning up in
14 the SIP's.

15 I also understand that there are very important areas in
16 the country that even with the SIP modifications brought down
17 to current knowledge, current technology, current cleanup, that
18 those areas still would have a serious problem. I would like
19 to know where the areas are that would not get much benefit and
20 if I am right in my assumptions that the SIP revisions would
21 help many areas, but still leave some problems.

22 I think the cities and States that have big areas of indus-
23 trial development, refining capacity, future energy growth areas
24 that they ought to be genuinely concerned about this discussion
25 because it is not something like two years on a high altitude

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1 standard. This is the industrial base of the nation.

2 In many of those communities, at least in eastern America,
3 they are also suffering the great economic downturn that came
4 with the Pittsburghs and the Detroit and the others. This is
5 kind of their problem in a very real way. I know Texas has a
6 serious one, but it is a little different in that it is in a
7 vital growth area. That is why the Senator from Texas is con-
8 cerned; but those Senators from northeastern industrial America
9 ought to understand that this may be the most critical area as
10 to where they are going to be 15 years from now.

11 I think we ought to address it. I commend the Senator from
12 Texas for staying with it. I am willing to work on it because
13 it is a tough one for the United States, I believe.

14 Senator Muskie. The interesting point is we at least have
15 come along the road in clean air far enough so that this problem
16 has become -- it was so far from dealing with the problem that
17 we weren't up against the ceiling. Now we can see the ceiling
18 is there and it poses these other problems.

19 Senator Bentsen. I don't think enough recognition has been
20 given to the fact of the great progress that has been made.
21 When you take a city like that reducing its emissions by 65 per-
22 cent, that wouldn't have been done without this legislation,
23 obviously.

24 I sit on many a board, corporations. If somebody would
25 come in to you and say, I want to put in a \$6 million

1 installation in our division to cut down on the emission of
2 pollutants, you would say, does the law require that? No, the
3 law doesn't require that, but I want to do that as a good citi-
4 zen because I want to help clean up the air of this city and
5 this country.

6 You say, how much does that add to the cost of the product?
7 He would say, oh, about 15 percent. The board would say, you
8 are an idiot, we would be out of business. Obviously, we need
9 this kind of legislation. Obviously, the pressure has to stay
10 on as we try to cut down on emissions.

11 I think a great deal of progress has been made in this
12 country. A great deal remains to be done. We do have some
13 solutions that are being proposed here to try to do it in a
14 feasible way where it has a sense of accomplishment.

15 Senator Muskie. Ed?

16 Mr. Billings. Let me preface this attempt at an explana-
17 tion by underscoring what you said at the outset. That is the
18 staff has made an attempt to resolve some of the issues that
19 have been identified. The degree to which the staff is satis-
20 fied with the product varies.

21 I would hope that other members of the staff would be
22 permitted to become involved in this discussion as we go along
23 because what I am about to outline is a product of about 10 two
24 or three-hour staff sessions. Most of the staff have been
25 involved. We have tried less to respond to the individual

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1 concerns of members and more to the overall problem, come up
2 with something which seems to meet some of the criteria that
3 have been identified and then with the hopes of presenting it to
4 the members and get some guidance as to its limitations and its
5 strengths.

6 The problem has been fairly well outlined by the members.
7 I won't repeat that outline, except to say that the criteria
8 against which the staff were working were, one, the existence of
9 inadequate implementation plans; the failure of autos to meet
10 the deadlines and the implications of that for the achievement
11 of standards; the impact of the EPA regulations which limit the
12 opportunities for new growth in areas in which standards haven't
13 been attained; the problem that is presented by the hiatus be
14 tween enactment of this legislation and any potential revision
15 of implementation plans; and the continuing difficulty of having
16 adequate and meaningful transportation controls.

17 I am sure there are others, but those are the ones that
18 immediately occur. What the staff has tried to do is use in
19 its proposed solution the one piece of leverage which the prob-
20 lem itself presents. That is the question of using new sources
21 and the decision whether or not new sources will be allowed to
22 go into an area as the sanction or the leverage to obtain cer-
23 tain kinds of responses from States and regions to the nonattain-
24 ment problem.

25 As a prelude to the entire discussion, what the staff

vf 32 1 will propose, however adequate the language might be, is that
2 without compliance with the requirements of the legislation,
3 either in the short-term or in the long-term, a new source
4 cannot go into an area.

5 That is the requirements by the States of its revision
6 responsibilities, the requirement of the States to comply with
7 the plans it has developed, and the requirements of the indi-
8 vidual sources to meet the requirements imposed on them, both
9 new and existing. That is the premise for the overall discus-
10 sion.

11 Senator Domenici. Compliance with what plans?

12 Mr. Billings. The compliance with the conditions of the
13 revised implementation plans.

14 The discussion here this morning has been primarily on
15 oxidants, but the problem may be as applicable to particulates.
16 It is not applicable to sulfur dioxides. It is also applicable
17 to carbon monoxide in certain cities.

18 The opportunity related to the oxygen problem didn't
19 present itself. We tried to arrive at a solution that would be
20 broader than that. So the staff went back to the basic law and
21 looked for places in which the law could be amended to provide
22 an opportunity for solution.

23 The most obvious place was in planned revision; establish
24 a mechanism in the Act which would provide a requirement for
25 plan revision, provide a time schedule for plan revision, a

vf 33 1 specified time schedule; not only revision, but also EPA
2 approval. So we would have certain States of which revised
3 plans would be approved and then a specified time frame in which
4 to carry out the requirements of those revised plans.

5 In those dates tentatively recommended, the revision com-
6 pleted by mid-1978, the approval by the first of 1979, and com-
7 pliance within three years. Those time schedules are consistent
8 with the time schedules the committee approved last year for
9 other aspects of the Act.

10 Having called for the revision of plans, then the staff
11 focused on what should be the minimal requirements of a revised
12 plan. Again bearing in mind that we are talking about health
13 standards and the nonattainment of health standards and not
14 something less important, there are three basic control require-
15 ments as elements of the proposal.

16 First, that new sources in dirty air areas be held to a
17 higher standard of performance than new sources in clean air
18 areas; and the words of art that were chosen and a definition
19 has been prepared, but I am not going to circulate language at
20 the moment.

21 Is the concept of lowest achievable emission rates, for
22 existing sources, because as Senator Bentsen points out, there
23 are many existing sources which are simply not covered by imple-
24 mentation plans, a requirement that at a minimum those sources
25 achieve what is reasonably available technology. That is in

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1 part justified on the theory that they are already there; they
2 shouldn't be subject to quite a severe a test as those new ones
3 who wish to locate in the area.

4 With respect to the oxygen question, that the State have
5 adopted for the State or the region all reasonable transporta-
6 tion controls. This is essentially the provision that the
7 committee adopted last year with the specific requirement that
8 an inspection and maintenance program be a reasonably available
9 transportation and maintenance control. All the material we
10 have looked at shows that this is an essential element of an
11 oxygen control program.

12 In addition to the control requirements, the questions are
13 even with all those controls you have the potential for increas-
14 ing emissions in these areas. So we looked back at the amend-
15 ment Senator Randolph offered last year to permit expansion in
16 existing nonattainment areas and the criteria that that amendment
17 established as the basis for expansion.

18 Those criteria included, first, a ceiling in the region,
19 no increase in emissions. The plan had to establish as a base
20 point no increase in emissions over that which exists now. I
21 think this is consistent with what Senator Bentsen is talking
22 about. You have to have some base with which to measure your
23 implements of progress. That is going to be somewhat difficult
24 in the planning process because not all sources have been iden-
25 tified.

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1 So the staff proposal will include a requirement consistent
2 with what Senator Bentsen proposed to make sure all those
3 sources are inventoried. They know what the nature is, how
4 much is going into the atmosphere and how much that base line
5 is. So you could have a beginning point.

6 Senator Domenici. Going back to the previous one on trans-
7 portation controls, you mention that it is the same as the two
8 five-year period plan that we adopted. What you said about
9 inspection and maintenance, would you tell me that again?

10 Mr. Billings. The language which the staff is working on
11 would require as a reasonably available control measure a
12 schedule for implementation of an inspection and maintenance
13 program in those areas in which the additional time is needed
14 to meet the oxygen standards.

15 Senator Domenici. That is saying that they can't fudge
16 on that one, but that one has got to be in the plan.

17 Mr. Billings. By statutory definition, that is reasonable.

18 Senator Domenici. Is that there only because of the
19 oxidant problem, in your thinking?

20 Mr. Billings. CO is also, it would arise in carbon
21 monoxide also.

22 Senator Domenici. Is somebody genuinely looking at the
23 regulation on the oxidant standard to see if it is right or not?

24 Mr. Billings. Yes.

25 Senator Bentsen. We have a study being made now.

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1 Mr. Billings. The National Academy of Sciences has com-
2 pleted a review of the oxygen standard from the health side.
3 That has been transmitted --

4 Senator Bentsen. But the Air Commission?

5 Mr. Billings. What EPA is reviewing is legislation that
6 would require a review of it. What the legislation would do
7 as it is drafted and what is not really being done in a major
8 way to my knowledge, is to relate not just the standard and
9 whether that is the proper number for health effects, but rather
10 the hydrocarbon control strategy, whether the methodology of
11 achieving that standard was adequate. That was the primary
12 thrust last year, was to look at whether the control strategy
13 was related to achieving the standard.

14 Senator Burdick. I have got a related question. If the
15 emissions from an existing facility are included in the compo-
16 sition of the base line and then later the facilities cease to
17 make a contribution to the base line, what happens to that
18 contribution? Can the facilities replace the boilers and use
19 the same gases below the base line?

20 Mr. Billings. The answer to the second question is yes,
21 which I think answers the first question, the existing facility
22 by closing reduces -- it is not counted against the base line
23 and to the extent that the new facility uses up what was added
24 by the old facility, that basically satisfies in the nondegradation
25 provision. We are going to use report language to make that

vf 37

1 point clear.

2 Senator Burdick. Can you clear it up with report language?

3 Mr. Billings. I think regular language would confuse it.

4 The statute, I think, has been fairly clear. There has been
5 some misapprehension in the statute.

6 Senator Burdick. You want to correct it one way or another?

7 Mr. Billings. Yes.

8 Senator Domenici. One follow-on, I understand that even
9 though we may be studying the standard that we are talking
10 about, oxidant standard, that you are talking about transporta-
11 tion control planning with a forced ingredient of inspection and
12 maintenance for those areas that are so far away from that
13 standard that it isn't going to make much difference if the
14 standards change.

15 Mr. Billings. That is right. In most of these areas, the
16 standard is exceeded by measures of three or four. There is a
17 tremendous amount that needs to be done in the way of new car
18 controls, in the way of identifying smaller sources and getting
19 them under control, and even controlling some of the bigger
20 sources to begin to cut down on the high points which the stan-
21 dards exceeded.

22 I think I left off at no increase in the lid on emissions
23 in the region. Those requirements, then, of the lowest achiev-
24 able rate for new, reasonably available for old, no increase
25 regionally, thus the question and the sticky wicket is how do you

vf 38 1 maintain progress, what is the measure against which you judge
2 whether or not a State in its plan or a region in its plan is
3 going to maintain some progress towards that ambient air quality
4 standard by the fact of the real life experience in the regions
5 is considerably further away than we hoped it would be in 1970.

6 We are using again, the element of Senator Randolph's
7 amendment last year which required that to be a demonstration,
8 that the total allowable emissions from existing sources and the
9 new sources would be sufficiently reduced so as to represent a
10 reasonable further progress towards the ambient air quality
11 standard.

12 The statute would define what further progress is in words
13 which would require that those be increments of progress and not
14 just some imaginary or mythical speculation.

15 Those are the basic elements of what the revised plan would
16 have to be. They would give a long-term strategy for moving
17 towards the ambient air quality standard. They would provide a
18 basis against which EPA could determine whether or not a State
19 was making progress in sufficient specificity for EPA to make
20 decisions on whether individual new sources should be allowed
21 to go ahead, based on compliance with those provisions.

22 However, they do not deal with the fact that right now,
23 1977 and until January 1, 1979, we do not have adequate imple-
24 mentation plans, we do not have reasonably available control
25 technology on a lot of existing sources, we don't know what a

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1 lot of the existing sources are, and we don't have a regulatory
2 mechanism in place in this proposal; we don't have a regulatory
3 mechanism to ensure interim implementation.

4 The staff, again taking advantage of Senator Randolph's
5 proposal from last year, which may be better summarized to
6 place in perspective. This required the owner-operator of a
7 source that wanted to expand an existing facility to show that
8 the new source would not increase emissions. There would be a
9 trade-off and it would have to show that existing facilities
10 were going to be sufficiently controlled so as to merit the new
11 source to come in and essentially the long-range kind of offset
12 policy I described.

13 What we are suggesting is that that provision be expanded
14 to include not only permits for expansion of existing sources,
15 but also permits for new sources and that during that interim
16 period, the owner-operator of the new source have the burden
17 to show that his emissions will not contribute to an increase in
18 emissions in the area and that, in fact, there will be a suffi-
19 cient reduction to offset those new emissions and maintain
20 reasonably further progress.

21 That judgment in that interim period would be on a case-by-
22 case basis, whereas in the long-run, it would be a regional
23 basis. That is the essence.

24 Senator Bentsen. I think this might be a time to address
25 myself to one of the points which I frankly don't think would be

vf 40 1 very difficult to resolve. That is the time schedule for a
2 State's reply with an implementation plan. As I understand what
3 the staff is talking about, we have to submit that plan by
4 mid-1978, and that you have to have it finalized and in effect
5 by the start of 1979, January 1979.

6 I don't believe that is realistic, frankly, because I am
7 not sure when this legislation will pass. I suppose not earlier
8 than this summer, sometime this summer. Then you have got the
9 problem of the regulations to be changed. I don't believe the
10 States can get back with their plan in less than six to seven
11 months after the regulations.

12 Here is the Texas Air Control Board, their last implementa-
13 tion plan. I think they are entitled to six or seven months to
14 get it back after the regulations are published. I believe it
15 would be a more realistic date to say that they have to have it
16 submitted by December 31, 1978, and approval June 30, 1979.

17 As I understand it, California and Texas have two of the
18 fullest staffs and possibly as much information available as any
19 other State on what they have done thus far in the way of moni-
20 toring; but they tell me it is just physically impossible for
21 them to achieve it unless they have six or seven months after
22 the regulations.

23 Senator Muskie. How many months difference?

24 Mr. Billings. It is a six-month slide.

25 Senator Muskie. On both points?

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1 Mr. Billings. Yes, that is right. Karl was just pointing
2 out that EPA has already triggered a process for planned revision.
3

4 Mr. Braithwaite. July 1, 1976, 43 States were issued
5 notices that their plans were inadequate and that they would
6 have until July 1, 1978, to submit revisions. We picked these
7 dates in here to correspond with that, in part.

8 Senator Bentsen. We are talking about some rather major
9 changes here. Those plans go out the window. They are going
10 to have to revise them substantially based on whatever you do,
11 I assume.

12 Senator Muskie. Let's consider that point without trying
13 to resolve it now, as we consider the other points. Six months
14 just standing on itself on the bias can't be all that much of a
15 problem. I would rather set a realistic deadline rather than
16 an arbitrary deadline. The difference is six months. Let's see
17 what the accumulative effect of other changes might be before we
18 resolve that point.

19 It is open, I think, to other discussion, if there are
20 questions?

21 Senator Domenici. I have one question. Aside from this
22 timing problem that Senator Bentsen raises, what happens in
23 between, whether we have the added six months or not? I understand the trade-off would be available in the meantime. What else? What is the discussion of availability of or not for

vf 42

1 growth in the meantime?

2 Mr. Billings. Let me try to describe it this way and if
3 I don't hit it, come back. The basic elements in both the
4 short-term and longer term are going to be the same in terms of
5 a new source, lowest achievable emission rate, no increase in
6 emission, the reasonable further progress.

7 The difference is that in the short-term, there is a
8 greater degree of responsibility on the individual source and
9 it would be a case-by-case judgment; whereas in the long-term,
10 it would be part of an overall regional implementation.

11 Senator Domenici. This lowest possible achievement --

12 Mr. Billings. Lowest achievable emission rate?

13 Senator Domenici. Yes. Is that going to be a new word
14 of art like BACT?

15 Mr. Billings. Yes, sir, and unlike BACT, it would be
16 defined.

17 Senator Domenici. Defined by us?

18 Mr. Billings. In the statute.

19 Senator Domenici. It would be clear there that it is
20 truly placing the highest possible control strategy for a new
21 source in a dirty area. What else is in the definition?

22 Mr. Billings. Yes. Let me read you the draft. We are
23 still, excuse the word, playing with this language. "Lowest
24 achievable emission rate means that rate of emissions which
25 reflects either (a) the most stringent emission limitation which

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1 is contained in the implementation plan of any State and which
2 is determined by the reviewing State to be achievable; or (b)
3 the lowest emission rate which is achieved in practice for such
4 type of source, whichever is lower."

5 In other words, the State of New Mexico would look at other
6 State implementation plans, determine what most stringent rate
7 of emission is and if it determines that as achievable for the
8 source, that would be the first test, or it could look at and
9 see what the lowest emission rate actually achieved has been and
10 on the basis of its judgment, it would establish the lowest of
11 those two.

12 Senator Domenici. It is clear in this definition, econom-
13 ics has nothing to do with it.

14 Mr. Billings. Yes, to the extent it has been achieved by
15 another source, that is true, it would not.

16 Senator Randolph. I think if there is no further discus-
17 sion by the Senators who have been going back and forth with
18 staff members, mention has been made of the approach which I had
19 presented last year.

20 Under the BFA amendment, Leon, as I understand it, in our
21 present bill, after January 1, 1979 all existing facilities in
22 the region owned by the expanding source owner of source, must
23 actually be in compliance with the emission limitations if there
24 is to be the new emissions exception.

25 So just testing a compliance schedule would not seem to be

v2 44

1 enough after that date; but this is a point that certainly is
2 discussable. I am very frank to say that industry sources have
3 talked not only with me, but with others and they feel that
4 there is a very real concern that many of the existing sources
5 will need a longer period of time to comply and already have
6 compliance schedules from EPA that go, as I understand it,
7 beyond that date. Is that true?

8 Mr. Billings. That is correct.

9 Senator Randolph. This problem indicates to me that it is
10 even more acute for the source which received a new emission
11 limitation under a revived implementation plan. That would be
12 close, Ed, presumably, to the January 1, 1979, date. I am not
13 sure that it is fair to completely cut off such sources until
14 they are actually in compliance.

15 What is your feeling about that situation?

16 Senator Muskie. May I ask the staff how that is accommo-
17 dated in a staff proposal?

18 Mr. Billings. It is not accommodated directly. With
19 respect to a particular point that Senator Randolph is making,
20 there are two kinds of problems. One probably is where a source
21 has an implementation and as a condition of taking advantage of
22 the expansion amendment, must be in compliance with that exist-
23 ing limitation by January 1, 1979, or it can't have a permit for
24 expansion.

25 That was adopted last year on the basis that in effect that

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1 provision gave them an additional 16 months from the maximum
2 date they would have had on the old law. That January 1979 date
3 was the date at which to start laying penalties and so on, get
4 everybody in January 1970 to get into compliance or the earlier
5 date that was determined practical. So those that can't get in
6 compliance by that date can't get a permit for expansion until
7 they are in compliance.

8 The second problem is the facility which would ordinarily
9 be in compliance by January 1, 1979, but the State has revised
10 an implementation plan to give that facility a new implementa-
11 tion. Under the rule generally, the new emission limitation
12 would have a time schedule on it; if not, more than three years
13 to get in compliance.

14 In my view, if that new emission limitation were in fact
15 a new emission limitation, a more stringent emission limitation
16 for the purpose of improving the air quality result, then the
17 January 1, 1979, date should not be limited. The problem is,
18 and we have discussed this with a number of --

19 Senator Bentsen. Would you restate that?

20 Mr. Billings. You have an emission limitation of 50 right
21 now. The States comes in and says, we want you to get down to
22 25 and they put that limitation into effect before this January
23 1979 date. Ordinarily, you would have three years to comply;
24 but that would be 1980 or 1981. The provision is written to
25 cut off at 1979, although the emission wouldn't be complied with

vf 46 1 until later.

2 The other problem is we don't have a new emission limita-
3 tion that has a January 1, 1979, cutoff. There are two distinct
4 cutoffs.

5 Senator Muskie. Your base line is based on what is
6 actually the situation?

7 Mr. Billings. That is right.

8 Senator Muskie. And not on what the situation would be if
9 present requirements were fully implemented, I mean where they
10 emit passage here, some polluters are ordered to achieve certain
11 results by certain dates; but that has nothing to do with the
12 base line.

13 The base line you are establishing is what you have now,
14 you can add the money in the bank to the extent that industries
15 which are under orders meet those orders, right?

16 Mr. Billings. Right.

17 Senator Muskie. To the extent they do not, to that extent
18 do you reduce the money in the bank that is available for new
19 sources or expansion?

20 Mr. Billings. That is right.

21 Senator Muskie. For what purpose do we want to spend the
22 money in the bank to give existing sources more time than they
23 now have under existing orders?

24 At any point that I am saying something that is inconsis-
25 tent with what you are expressing, flag me down; but to the

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1 extent that you use that money in the bank for existing sources
2 to relax present requirements that would give them more time,
3 to that extent do you limit the potential for using new sources
4 or expansion of existing sources?

5 Mr. Billings. That would be the case.

6 Senator Muskie. The question Senator Randolph has raised
7 is whether or not we should make some kind of explicit approval
8 for using the money in that bank or stretch out some time for
9 existing sources?

10 Senator Randolph. That is right, Ed.

11 Senator Muskie. That is the trade-off. The amendment we
12 passed last year, we said we should not.

13 Mr. Billings. The amendment last year said by January 1,
14 1979, you can't do anything new unless you are in compliance
15 with the old. The issue was not addressed last year what
16 happens between the time of enactment if you have a revised
17 plan and a restricter implementation.

18 The difficulty that it presented is let's assume a sweet-
19 heart contract between a source and a State, the source says
20 my deadline is January 1, 1979, I don't want to meet it. My
21 standard is one pound. Reduce my standard to .99 and that will
22 give me an extra three years.

23 Our difficulty was to try to figure out how if we were
24 going to change this January 1, 1979, deadline and let them have
25 more time to meet the stricter limitation, not to give them the

vf 48 1 time to cut the contract. We weren't able to resolve that.

2 Senator Muskie. Going beyond the specific question Senator
3 Randolph has raised, looking at the clock, is it a realistic
4 notion that we try to button up this issue this morning? You
5 don't have the language, do you?

6 Mr. Billings.. No. What we had hoped, Senator, was that we
7 would get sufficient guidance as to whether we were going down
8 the right path.

9 Senator Muskie. What form would you like that guidance to
10 take?

11 Mr. Billings. If we had been told to leave the room, we
12 would have felt we were on the wrong path.

13 Senator Muskie. I think you have this much guidance at
14 this point. We haven't had as complete attendance, for good
15 reasons, as we would like. I sense that the reaction on the
16 table is let's develop this further. Is that good enough advice
17 advice?

18 What I really want to know is is it realistic to dispose
19 of this issue this morning?

20 Mr. Billings. No, but we could have language by 9:30 on
21 Monday morning, before the committee.

22 Senator Muskie. But what you are saying indirectly is that
23 you don't think it is realistic to try to nail down this issue
24 this morning?

25 Mr. Billings. I refuse to comment.

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1 that because I think they make a legitimate point that you can
2 get a ratchetting on that curve on the individual plan.

3 What I want to be sure of is that that curve continues
4 steadily downward in the emission of pollutants and that the
5 Administrator will have the authority to accept that.

6 Mr. Billings. Senator, in what staff has tried to describe
7 that flexibility exists in the long-run, after the revised plan.
8 Our difficulty was in this interim period between now and when
9 you have a revised plan, how do you create a process which could
10 be handled swiftly, because in order to be meaningful, you would
11 have to handle it swiftly.

12 I don't think any of us are terribly enamored with the
13 offset policy as a single strategy. It is one strategy and
14 there may be others, but our difficulty is making the transition
15 in what we do in that short term and how we could assure that a
16 State which came in with an alternative policy could get its
17 alternative policy approved and get new permits issued and so
18 on.

19 It seems to me if the State is that far along on an alter-
20 native mechanism for measuring new growth in existing reduc-
21 tions, that State then would be theoretically that far along in
22 a planned revision. Maybe in most cases the States are ready to
23 move with something other than offset, the Administrator could
24 approve their plans at an earlier date. 1979 is for the laggards,
25 for the States that haven't done the job. Maybe what we need to

vf 51 1 doe is in some way expedite consideration of those plans which
2 are ready to go with an alternative policy.

3 Senator Bentsen. I respond to that by saying that I am
4 not sure of how they can prove that either; but I would like
5 to say that if they can, that the Administrator would have the
6 authority to accept that, if they can show that they are incre-
7 mentally reasonably lowering the amount of pollutants.

8 Mr. Billings. Let us try to develop some language for you
9 and see what it would look like. This would be in the alterna-
10 tive to the trade-off in the short-term.

11 Senator Bentsen. That is right, in the short-term.

12 Senator Muskie. My disposition is to ask the staff to
13 develop this further, given whatever guidance they have.

14 Senator Randolph. They are deeply involved in this prob-
15 lem.

16 Senator Muskie. I don't see any resistance in the direc-
17 tion in which we are moving. Since there have been no serious
18 challenges to anything that has been proposed at this point, we
19 better get it in more specific form so members can see what it
20 looks like. It is rather difficult to explore it further with
21 the attendance we have got now.

22 Mr. Billings. May I raise one additional question which
23 has troubled us? EPA's current policy, their current offset
24 policy is premised on an assumption that a new source cannot
5 claim as a demonstration of reduction in emissions for existing

v 52 1 sources those reasonably available controls that might otherwise
2 be required of that source had an adequate implementation plan
3 existed.

4 It is, in essence, a projection against the assumption, if
5 an establishment had reasonably available controls on it, its
6 emissions would be X and you could claim for a trade-off some-
7 thing below X, but you can't claim that amount which would get
8 down to X because you didn't have reasonably available controls.

9 That considerably changes the nature of the game. If you
10 say in this short-term policy, before this revised plan is in
11 which would require reasonably available controls across the
12 board, if you require a showing that the degree of reduction
13 from existing sources assumes some level of control on these
14 existing sources, it puts a tougher burden on the new source,
15 but it certainly provides a better measure for growth for new
16 sources.

17 It may be critical to how much progress you get in the
18 near term in these difficult areas. It is an area where we
19 need guidance.

20 Mr. Braithwaite. The theory behind that more stringent
21 approach is that if controls would come normally on those
22 sources as a result of the regular features of the Clean Air
23 Act ongoing, that they then ought not be available in this kind
24 of offset policy.

25 If they were going to occur as a result of the thrust of

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1 the Act already, that that should be not available, but the new
2 sources should be finding additional sources to control as the
3 offset.

4 In fact, it gets further complicated by the fact that last
5 summer EPA did in fact issue orders to mandate to the States
6 that reasonable available controls would have to be part of the
7 new plans that were ordered to be submitted. For these sources,
8 they are already under notice for nine months that there is a
9 likelihood they have to be put under reasonable controls.

10 Senator Randolph. Are you saying there has to be added
11 efforts, not only incentive, but there has to be something done?
12 Is that correct?

13 Mr. Braithwaite. That is the basic thrust of that
14 philosophy, yes.

15 Senator Bentsen. It also seems to me what Leon is saying
16 and he has posed a very major issue here, that if you had a
17 region that was slow in compliance, they would have quite an
18 advantage in that situation, unless you went to this other
19 standard you are talking about.

20 Mr. Billings. That is right.

21 Senator Muskie. What you are also assuming is adding a
22 burden in addition to that which the present law imposes upon
23 the White House, is a reasonable and feasible option. Is it or
24 isn't it?

25 Senator Bentsen. That is one I sure want to think about

vf 54 1 over the weekend.

2 Senator Muskie. The whole strategy is posed on that --

3 Mr. Billings. The situation Senator Bentsen described, 85
4 percent emission in Houston -- you have other regions, Califor-
5 nia, Texas -- may be several strong strides ahead of the coun-
6 try. Another area in a nameless State which has done nothing
7 si going to have a lot more new refineries and petrochemical
8 complexes than southern California or Houston.

9 The staff would think it useful to prepare language which
10 would implement a policy which uses the assumption of adequate
11 controls as the base line so that the members could see what the
12 alternatives are. There would be two areas in which there would
13 be alternative language and perhaps three, because of the ques-
14 tion Senator Randolph has raised.

15 One is the proposal of Senator Bentsen, that the Adminis-
16 trator has some flexibility; two, some language on the base line
17 and; three, some language on what happens when a plan is revised
18 before the 1979 deadline and a stricter emission limitation is
19 imposed on existing facilities.

20 Senator Randolph. Flexibility is involved here. We can't
21 get away from that regardless of the positions we are taking.
22 I think staff has been helpful to me and, I am sure, to others.
23 I guess we must wait until next week.

24 Senator Muskie. I think we better. The concept has been
25 spelled out here. We need to think about the implications of

1 that concept. We can't do that without a proposal. I think we
2 ought to instruct the staff to propose some language and circu-
3 late it, let members digest it.

4 Senator Randolph. John, would you give us the amendment
5 so far as we know that do not go to nonattainment that are to
6 be offered or presumably offered?

7 Mr. Yago. On the addition, in addition to the nonattain-
8 ment admendment, are No. 4, the Environmental Review Board which
9 is your amendment, Senator Randolph; Senator Stafford's amend-
10 ments on notification of hazard, relating to automobile emis-
11 sions of Senator Hart and another automobile related amendment
12 which may be proposed by Senator Anderson.

13 Senator Randolph. I am prepared to offer an amendment
14 and have it slowed, but I don't see how we can operate today.

15 Senator Bentsen. We are long on quality and short on
16 quantity.

17 Mr. Billings. Thank you.

18 (Laughter.)

19 Senator Randolph. Just looking out at the sun, what about
20 our meeting time? 9:30 on Monday is what we have proposed.

21 Senator Bentsen. I won't be back in town until about 12
22 o'clock. Let me say I have no objections, other than I very
23 much want to be here when you go to the nonattainment.

24 Senator Muskie. We can deal with the other amendments.
25 Could we have an agreement? There are five amendments that are

vf 56 1 nonattainment related. Could we reach a time agreement on each
2 one of those now?

3 Senator Randolph. Senator Hart told me that he didn't
4 think he needed more than 10 minutes from his standpoint on
5 each of them. That would be 20 minutes. I discussed it with
6 him briefly.

7 Senator Muskie. That would be 30 minutes on each of the
8 Hart amendments. Mr. Chairman, how about yours?

9 Senator Randolph. That is agreed, 10 minutes.

10 Senator Muskie. That as an hour on those three.

11 Mr. Brayman. I am sure Senator Stafford could do with two
12 minutes on the side. It is a very brief amendment.

13 Mr. Billings. Senator Anderson, 10 minutes.

14 Senator Muskie. That is an hour and a half. That gives
15 us plenty of leeway to dispose of those on Monday.

16 Senator Randolph. Why don't we get in on Monday at 10
17 o'clock. That would give us the time to move into the finaliza-
18 tion by noon.

19 Senator Muskie. If any of the Senators involved don't
20 think that is unreasonable, we can relax.

21 Senator Randolph. Before we leave, I want John to explain
22 the scheduling information.

23 Mr. Yago. At the beginning of this meeting, members dis-
24 cussed the desire and urgency to move this bill. If there is
25 any additional incentive needed, I can say we have a number of

other bills that must be reported on this committee prior to May 15. Hearings on some of those will start next Wednesday.

The first one is hearings on the authorization for Nuclear Regulatory Commission. That is the first of three hearings on that subject. We also have begun hearings on several areas in the Water Resources Committee, Subcommittee of General Water Policy, everybody's favorite, Locks and Dam 26. We will have to do hearings on the various areas associated with the Fish and Wildlife Service, proposals for the establishment of refuges and the reauthorization of the Species Act and areas related to that and there will also have to be one or two hearings on disaster relief authorization.

Senator Muskie. We may need legislation to protect extinct species.

Senator Randolph. We may need legislation to protect this committee.

(Laughter.)

Mr. Yago. This is the additional incentive to dispose of the Clean Air Act.

Senator Randolph. 10 o'clock Monday morning.

Thank you all.

(Whereupon, at 11:50 a.m., the committee recessed, to reconvene at 10 a.m., on Monday, March 28, 1977.)

